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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Philip Choi Gai, ) No. CV 09-1816-PHX-MHM (ECV)  
Plaintiff, )  
vs. ) **ORDER**  
Charles L. Ryan, )  
Defendant. )

Plaintiff Philip Choi Gai, who is confined in the Arizona State Prison-Phoenix, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and Application to Proceed *In Forma Pauperis*. On October 6, 2009, the Court denied the Application to Proceed, with leave to re-file, because Plaintiff did not submit a certified six-month trust account statement. On October 30, 2009, Plaintiff filed a new Application to Proceed (Doc. #5) that is also deficient. The Court will give Plaintiff a final 30 days to pay the fee or file a completed Application to Proceed *In Forma Pauperis* and certified six-month trust account statement.

## **I. Payment of Filing Fee**

When bringing an action, a prisoner must either pay the \$350.00 filing fee in a lump sum or, if granted the privilege of proceeding *in forma pauperis*, pay the fee incrementally as set forth in 28 U.S.C. § 1915(b)(1). An application to proceed *in forma pauperis* requires an affidavit of indigence and a *certified* copy of the inmate's trust account statement for the

1 six months preceding the filing of the Complaint. 28 U.S.C. § 1915(a)(2). An inmate must  
2 submit statements from each institution where he was confined during the six-month period.  
3 *Id.* To assist prisoners in meeting these requirements, the Court requires use of a form  
4 application. LRCiv 3.4(a).

5 If a prisoner is granted leave to proceed *in forma pauperis*, the Court will assess an  
6 initial partial filing fee of 20% of either the average monthly deposits or the average monthly  
7 balance in Plaintiff's account, whichever is greater. 28 U.S.C. § 1915(b)(1). An initial  
8 partial filing fee will only be collected when funds exist. 28 U.S.C. § 1915(b)(4). The  
9 balance of the fee will be collected in monthly payments of 20% of the preceding month's  
10 income credited to an inmate's account, each time the amount in the account exceeds \$10.00.  
11 28 U.S.C. § 1915(b)(2).

## 12 **II. Application Fails to Comply With Statute**

13 Plaintiff did not use the court-approved form provided with the Court's last order to  
14 file his new Application to Proceed, but instead used the Application intended for habeas  
15 actions. Because Plaintiff has filed a civil rights Complaint, Plaintiff must use the court-  
16 approved Application form for civil rights cases. Further, Plaintiff has not submitted a  
17 certified six-month trust account statement. In light of these deficiencies, Plaintiff will be  
18 permitted a final 30 days to either pay the \$350.00 filing fee or file a complete Application  
19 to Proceed ***In Forma Pauperis and certified six-month trust account statement.***

20 The Arizona Department of Corrections ("ADOC") has notified the Court that a  
21 certified trust fund account statement showing deposits and average monthly balances is  
22 available from the ADOC's Central Office. Accordingly, ***Plaintiff must obtain the certified***  
23 ***copy of his ADOC trust fund account statement for the six months immediately preceding***  
24 ***the filing of the Complaint from the ADOC's Central Office.***

## 25 **III. Warnings**

### 26 **A. Address Changes**

27 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
28 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other

1 relief with a notice of change of address. Failure to comply may result in dismissal of this  
2 action.

## B. Copies

4 Plaintiff must submit an additional copy of every filing for use by the Court. See  
5 LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice  
6 to Plaintiff.

### **C. Possible Dismissal**

If Plaintiff fails to timely comply with every provision of this Order, including these warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to comply with any order of the Court).

12 | IT IS ORDERED:

13 (1) Plaintiff's October 30, 2009 Application to Proceed *In Forma Pauperis* (Doc.  
14 #5) is **denied without prejudice**.

18                   (3) If Plaintiff fails to either pay the \$350.00 filing fee or file a completed  
19 Application to Proceed *In Forma Pauperis* within 30 days, the Clerk of Court must enter a  
20 judgment of dismissal of this action without prejudice and without further notice to Plaintiff.

21 (4) The Clerk of the Court must mail Plaintiff a court-approved form for filing  
22 an Application to Proceed *In Forma Pauperis* (Non-Habeas).

DATED this 16<sup>th</sup> day of December, 2009.

Mary H. Murguia  
United States District Judge